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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 2015

[WAC 01 243 59307]

IN RE:

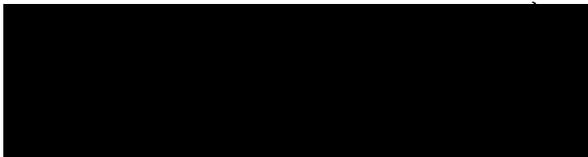
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant has retained an attorney who specializes in criminal cases and intends to request an expungement of one or both of his misdemeanor convictions, or the reduction of the misdemeanor to an infraction. While counsel indicates that she is sending a brief and/or evidence within 30 days, to date, no additional information has been submitted. Therefore, the record shall be considered complete.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security, finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reflects the following:

1. On July 11, 2001, in Seaside, California, the applicant was arrested and charged with Count 1, driving without a license, a misdemeanor; and Count 2, giving false information to a peace officer, a misdemeanor.
2. On July 20, 2002, in Salinas, California, the applicant, under the name of [REDACTED] was arrested and charged with one count of disorderly conduct under the influence of alcohol/drug, a misdemeanor.

Based on information contained in the FBI report and the records of the Department of Homeland Security (DHS) database, the director determined that the applicant was convicted on August 1, 2001, in California Superior Court, Salinas, California, of the two misdemeanors listed in No. 1 above.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the court's charging documents and final dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. There is no evidence in the record that the applicant was requested to submit the court documents for all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all arrests, and for consideration and discussion of all issues pertinent to this case. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

It is noted that counsel, on appeal, asserts that the applicant is seeking an expungement of one or both of the convictions, or the reduction of the misdemeanors to infractions. However, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

It is further noted that although the applicant furnished an El Salvadoran birth certificate, the photocopy of the applicant's national identity document appears photo-switched; therefore, the applicant has not sufficiently established his nationality and identity.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.